

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BREMERTON**

In the Matter of the Application of)	Case No. BP24 00056
)	
Raydient, LLC)	Wright Creek RUE
)	
<u>For Approval of a Reasonable Use Exception</u>)	FINDINGS, CONCLUSIONS, AND DECISION

SUMMARY OF DECISION

The request for a reasonable use exception to allow for the development of two commercial buildings and related improvements that would result in approximately 36,000 square feet of impacts to protective buffer areas associated with numerous offsite wetlands and an offsite stream, on two parcels totaling approximately 1.76 acres, located at 5235 and 5225 Sinclair Way, is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on April 28, 2025.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Justin Rowland, City Senior Planner
Jon Rose, Officer with Raydient
Dane Jepsen, Planner with LDC, Inc.
Ben Wright, Principal Fisheries Biologist with Soundview Consultants, LLC
Anna Mockler

Exhibits:

The following exhibits were admitted into the record:

- A. Reasonable Use Exception application, dated February 20, 2024
- B. Proposal narrative summary, dated February 19, 2024
- C. Environmental Checklist, prepared March 20, 2024
- D. Wetland, Fish and Wildlife Habitat Assessment Report and Buffer Enhancement Mitigation Plan, prepared by Soundview Consultants, LLC, dated May 30, 2024
- E. Preliminary Site Plan, dated December 10, 2024
- F. Preliminary Landscaping Plan, dated December 6, 2024

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- G. Wright Creek Business Park Phase 2 Plat, dated November 28, 2007
- H. Critical Areas Handbook excerpt, published by the Washington State Department of Commerce
- I. Previous Hearing Examiner Decision approving a Reasonable Use Exception, dated June 16, 2020
- J. Mitigated Determination of Nonsignificance, dated March 28, 2025
- K. Noticing Record
 - K1. Notice of Incomplete Application, dated March 20, 2024
 - K2. Notice of Incomplete Application, dated May 20, 2024
 - K3. Determination of Completeness, dated June 13, 2024
 - K4. Notice of Application, dated June 13, 2024
 - K5. Declaration of Posting, dated July 31, 2024
 - K6. Declaration of Mailing, dated July 31, 2024
 - K7. Address labels
 - K8. Order Confirmation for publication in the *Kitsap Sun* on July 31, 2024
 - K9. Comments
 - i. Comment from Kelly Price on behalf of the Washington State Department of Ecology, dated August 14, 2024
 - ii. Comment from Neil Molstad on behalf of the Washington State Department of Ecology, dated June 24, 2024
 - iii. Comments from the Suquamish Tribe, dated August 14, 2024
 - K10. Applicant response to additional requests from City staff and comments on the proposal, dated December 11, 2024
 - K11. Notice of Public Hearing
 - i. Posted April 18, 2025
 - ii. Mailed April 17, 2025
 - iii. Published in the *Kitsap Sun* on April 18, 2025
- L. Staff Report, dated April 18, 2025
- M. Written Comments submitted via two emails from Anna Mackler, dated April 28, 2025

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Raydient, LLC (Applicant), requests approval of a Reasonable Use Exception (RUE) that would apply to two separate parcels to allow for the development of two commercial buildings and related improvements that would impact protective buffer areas associated with six offsite wetlands and an offsite stream.¹ The buffer areas related to the offsite

¹ The Applicant and the City agree to treat the two lots as a single project proposal; therefore, this decision refers to the two lots as the “subject properties” or “properties” throughout.

wetlands and stream have a standard 150-foot buffer protection area, which fully encumbers the southern parcel (Lot 1) and leaves approximately one third of the northern parcel (Lot 2) available for development. The Applicant proposes to reduce the standard buffer width to a minimum of 50 feet, which would permanently impact a total of 36,044 square feet of protective buffer area. As mitigation for the project's buffer impacts, the Applicant proposes to restore and enhance 20,175 square feet of on-site protective buffer area and to remove invasive vegetation located offsite. Lot 1 is located at 5225 Sinclair Way, and Lot 2 is located at 5235 Sinclair Way.² *Exhibit A; Exhibit B; Exhibit L, Staff Report, pages 1 and 2.*

2. The City of Bremerton (City) determined that the application was complete on June 13, 2024. On July 31, 2024, the City provided notice of the application in compliance with City ordinances by posting notice at the subject property, publishing notice in the *Kitsap Sun*, and mailing notice to owners of property within 300 feet of the subject property, with a comment deadline of August 14, 2024. On or around April 18, 2025, the City provided notice of the open public hearing in the same manner. The City received comments from the Suquamish Tribe, the Washington Department of Ecology (DOE), and a member of the public in response to its notice materials, which are discussed in detail later in this decision. *Exhibit L, Staff Report, pages 7 and 8; Exhibit K; Exhibit M.*

Environmental Review

3. The City acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City used the optional Determination of Nonsignificance (DNS) process under Washington Administrative Code (WAC) 197-11-355 and provided notice of its environmental review together with the notice of application. The City's notice materials stated that it expected to issue a Mitigated Determination of Nonsignificance (MDNS) for the proposal and provided a comment deadline of August 14, 2024. The City reviewed the Applicant's environmental checklist, comments received from the Washington State Department of Ecology (DOE) and the Suquamish Tribe, and other available information, including information obtained from a site visit, and determined that, with conditions, the proposed use would not have a probable significant adverse impact on the environment. Accordingly, the City issued a MDNS under WAC 197-11-340(2) on March 28, 2025, with an appeal period ending on April 18, 2025. The MDNS was not appealed.

The MDNS requires the Applicant to comply with the following mitigation measures:

- Consistent with the *7/31/2024 Notice of Application*, the development shall conduct invasive vegetation management, removal, and treatment on

² The subject properties are identified by Tax Assessor Account Numbers 5549-000-001-0006 and 5549-000-002-0005. *Exhibit L, Staff Report, page 1.*

the adjacent City owned parcel (PID 5549-00-011-0004). Work shall be accomplished prior to occupancy of the site.

- Only in instances where the maintenance of the adjacent stormwater pond is required will alteration of beaver habitat be considered; in those instances, approval in writing from the City of Bremerton is required and a Hydraulic Permit Approval (HPA) from the Department of Fish & Wildlife shall also be completed.

Exhibit C; Exhibit J; Exhibits K4, K9, K10; Exhibit L, Staff Report, pages 6 and 7.

Background of Subject Properties

4. The subject properties were designated as Lot 1 and Lot 2 of the Wright Creek Business Park Phase 2 plat, which was recorded on December 4, 2007, and began the 10-year period that the properties were vested to regulations existing at the time the plat was recorded. During this 10-year period, the properties were cleared, and infrastructure, including stormwater infrastructure, was developed and installed in compliance with the regulations in effect in December 2007. The 10-year period lapsed without further development of the subject properties and, therefore, any new development of the properties must now comply with current regulations and requirements.

On June 16, 2020, a previous Hearing Examiner issued a decision approving a RUE for the two subject properties, as well as for an additional adjacent property that is not part of this current application. The 2020 RUE decision approved a request to reduce wetland and stream buffer requirements to allow for the development of a Fire-Training Facility. In approving the RUE, the Hearing Examiner noted:

- Because the properties were substantially covered by the buffer areas, the RUE was necessary to allow for a reasonable use of the property;
- The Applicant's inability to derive a reasonable use of the property is not the result of any actions taken by the Applicant; and
- With proposed conditions, the impacts from the proposal would be the minimum necessary to allow for reasonable use of the property.

The 2020 RUE provided that, if certain mitigation and development activities were not in place within two years, the RUE would lapse. The Fire-Training Facility was not developed, and the RUE expired. *Exhibit D; Exhibit I; Exhibit L, Staff Report, page 2.*

Comprehensive Plan and Zoning

5. The subject properties, and all adjacent properties are designated "Freeway Corridor" under the City Comprehensive Plan. The purpose of the Freeway Corridor designation is to "provide areas in the City that are regional serving in nature and scale, with signs and structures that are visible to motorists on nearby freeways, and require parking for high volumes of customers." *Comprehensive Plan page LU-27.* Uses within the Freeway Corridor designation include commercial, light industrial, and offices. *City*

6. The subject properties and all adjacent properties are zoned “Freeway Corridor.” The intent of the Freeway Corridor zone is to “identify areas for commercial activities that will typically be region-serving in nature and scale. Uses in the zone benefit from high visibility from freeways serving the region, incorporate signage legible to fast-moving traffic, provide large areas for parking, and may include large-scale structures and/or outdoor display or storage areas.” *Bremerton Municipal Code (BMC) 20.86.010*. The Freeway Corridor zone allows all uses outright except certain specified conditional and prohibited uses that are not relevant to this proposal. *BMC 20.86.010*. The adjacent property to the north consists of an undeveloped lot, property to the south consists of a stormwater pond tract, to the east is Sinclair Way and undeveloped properties, and to the west is an open space tract. *Exhibit L, Staff Report, page 3.*

Existing Site, Critical Areas, and Proposed Development

7. Soundview Consultants LLC (SVC), prepared a Wetland and Fish and Wildlife Habitat Assessment Report and Buffer Enhancement Mitigation Plan (Report) on behalf of the Applicant, dated May 30, 2024. Using data from multiple sources, including several site visits, SVC determined that the subject properties are adjacent to six distinct wetlands, Wetlands A, B, C, D1, D2, and D3, and one stream, Stream Z.

Wetland A is approximately 3,309 square feet and located to the southwest of the subject properties. SVC determined that Wetland A is a Category III Wetland with a habitat score of 6. Wetland B is approximately 88 square feet and located to the southwest of the subject properties. SVC determined that Wetland B is a Category III Wetland with a habitat score of 6. Wetland C is approximately 31,769 square feet and located to the west of the subject properties. SVC determined that Wetland C is a Category III Wetland with a habitat score of 7. During initial investigations of the site in 2019 and 2022, Wetlands D1 to D3 were considered a single wetland of approximately 215,224 square feet and located to the northwest of the subject properties. During a site visit in 2024, it was determined that beaver activity has created three distinct wetlands. SVC determined that each of these wetlands (D1, D2, and D3) were Category III Wetlands with habitat scores of 7.³ Stream Z is located to the west of the subject property and flows through Wetlands D1-D3 and Wetland C. SVC determined that Stream Z is a Type F stream, due to the presence of fish habitat within the stream. The Report noted that there is a natural fish passage barrier approximately 1,000 feet southwest of the subject properties that prevents

³ As discussed later in this decision, the Washington State Department of Ecology provided comments noting that Wetland D2 should be classified as a Category II Wetland with a habitat score of 7. The change in classification of Wetland D2 would not change the required buffer width.

anadromous fish from reaching the stream adjacent to the subject properties.⁴ The Report notes that the on-site protective buffer area associated with the wetlands and stream are already cleared and graded. The Applicant's proposal would avoid direct impacts to the wetlands and stream.

The Report states that the wetlands have a standard 150-foot buffer area and that the stream has a 150-foot buffer area, with a 15-foot setback, and cites to BMC 20.14.330(h)(1), which allows for a reduced buffer width of 110-feet if minimization measures are used. The Report determined that, with standard buffer widths, approximately three-quarters of the combined 1.76-acre site would be encumbered; that, even with the reduced buffer widths, approximately half of the combined site would be encumbered, and that, therefore, a RUE is necessary to allow for a reasonable use of the properties. *Exhibit D*.

8. The Applicant proposes to develop Lot 1 with a 6,000 square foot building and small parking lot, and to develop Lot 2 with an 11,500 square foot building and parking lot. To allow for this development, the Applicant is proposing a buffer reduction that would provide a minimum of 50 feet of protective buffer area, which would result in a permanent reduction in wetland and stream buffer area of 36,044 square feet. As mitigation for the permanent reduction, the Applicant proposes to restore 20,175 square feet on on-site protective buffer area by removing non-native invasive species and replanting with native species, which would restore habitat function, improve hydrology and water quality, and provide additional screening between the proposed development and the wetlands and stream. The restored on-site protective buffer area would be protected with fencing and signage and would be monitored and maintained. SVC determined that, with the proposed mitigation, the project would result in no net loss of stream or wetlands functions. *Exhibit D*.

Reasonable Use Exception

9. The purpose of the City's critical areas protection regulations is to "protect the public health, safety, and welfare by establishing provisions to classify, protect, and preserve Bremerton's critical areas and their functions and values." *BMC 20.14.110*. In furtherance of this purpose, the City's critical areas ordinance generally prohibits development within wetlands, streams, and their associated buffers. *BMC 20.14.330*. Property owners, however, may seek approval of a reasonable use exception from the Hearing Examiner if it can be demonstrated that the critical areas regulations would deny all reasonable use of the subject property. As noted above, the Applicant is requesting a reasonable use exception to allow for development of two commercial buildings and associated improvements within the protective buffer area of several wetlands and a

⁴ The Report states that the barrier prevents salmonids from reaching the site. As noted below, the Suquamish Tribe comments pointed out the possible presence of non-anadromous salmonids above the barrier. The applicant response notes that this was an oversight and concedes that there can be resident salmonids in the stream. *Exhibit K9(iii); Exhibit K10*.

stream. To approve a reasonable use exception, the Hearing Examiner must find that:

- (a) The application of this chapter would deny all reasonable use of the property;
- (b) No other reasonable use of the property has less impact on the critical area;
- (c) Any alteration is the minimum necessary to allow for reasonable use of the property; and
- (d) The inability of the applicant to derive reasonable use of the property, is not the result of actions by the applicant after the effective date of this title or its predecessor.

BMC 20.14.155.

10. City staff reviewed the proposal and determined that the RUE criteria would be satisfied, noting:

- The standard 150-foot buffer encumbers nearly three quarters of the total site area and even with standard buffer reductions, approximately half the site is encumbered.
- A reasonable use can be dependent on the zoning, adjacent uses, and size of the property. The intent of the Freeway Corridor zone includes large parking areas and large structures and there are no maximums for impervious surfaces or building coverage in the Freeway Corridor zone. Nearby parcels that were created at the same time as these parcels have been developed with significant impervious surface coverage.
- It is likely that any development proposal on these properties would require the reasonable use process.
- A prior reasonable use exception was approved for a more intense and more impactful use. The current proposed use will have wider protective buffer areas in some locations and increased mitigation over what was approved in the previous reasonable use exception.
- The Applicant has stated that no other reasonable use would have less impact on the critical area.
- With conditions, the proposal would be the minimum necessary to allow for reasonable use of the property.
- There is no evidence that the Applicant's actions led to the inability of the Applicant to derive reasonable use from the properties. The City adopted critical area ordinance regulations in 2016 and revised in 2021, which is after the creation of the subdivided lots.

Exhibit L, Staff Report, pages 3 through 6.

Written Comments

11. DOE provided comments in response to the City's consolidated notice materials, which noted that it was generally supportive of the mitigation actions and offsite mitigation required by the City, but which also provided the following technical comments and recommendations:

- After a site visit with City staff, the developer's wetland consultant, and Suquamish Tribe natural resources staff, DOE rated the wetlands adjacent to the subject property.
- Wetland D2 should be considered a Category II Wetland.
- A Wetland rating was not provided for Wetland D1 since it crosses private property and was not evaluated. Wetland D1 is over 200 feet from the subject properties and therefore the buffer area would not extend to the proposed development area.
- DOE recommends that the mostly intact wetland and stream complex to the west of the subject properties be permanently protected through legal mechanisms such as conservation easements.

Exhibits K9(i) and (ii).

12. Comments from the Suquamish Tribe noted that, even with mitigation, the proposed buffer reduction will have long-term impacts as this area would eventually revegetate. The comments stated that the Habitat Assessment Report does not incorporate suggestions from the Washington Department of Fish and Wildlife (WDFW) that stream buffers should be considered a critical area in their own right or, from recent documentation, that buffers for streams should be to a Site Potential Tree Height. Further concerns included that the Applicant has not considered avoidance of impacts; that the Habitat Assessment Report does not adequately consider fish and beaver impacts; and that the Habitat Assessment Report states that there are no salmonids present above the waterfall that blocks fish passage but neglects to note the possible presence of resident trout.

In response to comments from the Suquamish Tribe, the Applicant noted that a previous proposal was approved to allow for a firefighting training facility and that this proposal would be less impactful overall. As noted above, the Applicant agrees that there could be resident salmonids above the waterfall. Additionally, the Applicant stated that, although WDFW guidance suggests that riparian buffers are considered critical areas and recent documentation from WDFW indicates that stream buffer width should be site potential tree height, these requirements have not been adopted by the City.

Exhibit K9(iii); Exhibit K10.

13. Anna Mockler provided numerous email comments opposing the RUE request. In her comments, Ms. Mockler noted that she is a certified Professional Wetland Scientist, and she described the wetland system, noting that there are efforts to place the wetland into conservancy. She expressed concerns that the proposed project would disrupt beaver activity and impact other wildlife and suggested that the on-site habitat has been

degraded by mowing activity. Additionally, her comments object to the use of glyphosate within the buffer and request that the City take a more holistic view of the wetland system. *Exhibit M.*

Testimony

14. City Senior Planner Justin Rowland testified generally about the proposed project, notice procedures, and how, with conditions, the proposal would meet the criteria for a reasonable use exception. Mr. Rowland testified that the deadline for appealing the MDNS had passed, with no appeals filed. He testified about the protective buffers and noted that the location and size of the buffer areas make a reasonable use exception necessary to develop the property. He further noted that the current reasonable use exception application proposal is smaller in scope than that of the previously approved reasonable use exception for a fire-training facility. Mr. Rowland testified that the City recommends approval of the request, with the conditions recommended in the staff report. *Testimony of Justin Rowland.*
15. Jon Rose, of Raydient, LLC, provided historical context for the current request, noting that this area had initially been platted in the mid-2000s with a 20-year development agreement and that most of the development has already taken place, with only the three parcels that were the subject of the previous RUE approval remaining undeveloped. He testified that improvements to the three parcels were made after the initial platting, including developing Sinclair Street and installing stormwater infrastructure. He noted that these three properties have been marketed for 15 years and that the exception to allow reasonable development of the properties is necessary to attract buyers. Mr. Rose testified that the wetland regulations had changed after the initial plat and, therefore, the previous reasonable use exception was needed to allow for development. He stated that, although the previous reasonable use exception request was approved, the purchaser ultimately backed out of the sale and the previously approved RUE lapsed. He testified that he appreciated the City's recommendation of a condition allowing for the current RUE, if approved, to last longer so they can find a buyer. Mr. Rose confirmed that the Applicant agrees to comply with the conditions recommended by the City. *Testimony of Jon Rose.*
16. Project Planner Dane Jepsen, of Land Development Consultants, Inc., testified that the project has been designed to be less impactful than the previous project that received RUE approval, noting that the previously approved firefighting training facility would have been a more intensive use and would have occupied a larger area encumbered by wetland buffers. He testified that the current proposal would require less buffer modification and impervious surface area, pointing out that, under the previously approved RUE, Lots 1 and 2 would have been parking lots, whereas, under the current proposal, landscaping would be installed throughout these two lots. Mr. Jepsen testified that all stormwater would be drained offsite using the existing stormwater infrastructure. In response to public comments raising concerns about the location of the subject

property between a residential area and a public park, Mr. Jepsen stated that the SEPA checklist noted the presence of footpaths from the residential area to the park that cross over the subject properties and an adjacent property, and that the Applicant would ensure that this access across the sites would be retained. *Testimony of Dane Jepsen.*

17. Ben Wright, principal fisheries biologist with Soundview Consultants (SVC), testified about how the design of the current proposal would minimize and avoid impacts to the offsite wetlands and stream. He testified that SVC began the project redesign, after the fire fighting training facility permit had elapsed, by analyzing how development of the properties could reduce impacts. Mr. Wright testified about the decision to locate the buildings between the parking lot and road area and the backside of the property, where the protective buffer is located, noting that this would provide an additional barrier to the wetlands and associated buffers from noise and dust and would keep human activity away from the critical areas. Mr. Wright testified that the stormwater design has been adjusted to follow the building so that stormwater maintenance activity would not intrude into the preserved buffer area. Finally, he testified that, given the current conditions of the property and the mitigation proposed, there would be no net loss of wetland or stream function. *Testimony of Ben Wright.*
18. Anna Mockler testified that she is a retired wetland scientist and noted that, although she is a City Councilmember, she is not appearing on behalf of the Council. She urged rejection of the request, stating that the degradation of the property is due to mowing activity and that, when the property was not being mowed, it was well-functioning habitat. Ms. Mockler testified about the benefit that the beavers provide in flood control and water quality and expressed concerns that this activity could be disrupted. She noted that she has not observed water running through the existing stormwater infrastructure. Ms. Mockler testified that the property is located between a residential area and a park for children. She further testified about the conservancy work being done in the area and encouraged this work to continue. *Testimony of Anna Mockler.*

Staff Recommendation

19. Mr. Rowland testified that the City staff recommends approval of the reasonable use exception, with conditions. *Exhibit L, Staff Report, page 8; Testimony of Justin Rowland.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is authorized to grant, grant with conditions, or deny applications for a reasonable use exception. *BMC 2.13.070; BMC 20.14.155.*

Criteria for Review

Reasonable Use Exception

The Bremerton Municipal Code authorizes the Hearing Examiner to consider applications for reasonable use exceptions where “it can be demonstrated that the application of [the critical areas] chapter would deny all reasonable use of the subject property.” *BMC 20.14.155.*

The decision whether to grant the reasonable use exception shall be processed as a Type III Hearing Examiner decision per BMC 20.02.110 pursuant to the following review criteria:

- (a) The application of this chapter would deny all reasonable use of the property;
- (b) No other reasonable use of the property has less impact on the critical area;
- (c) Any alteration is the minimum necessary to allow for reasonable use of the property; and
- (d) The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant after the effective date of this title or its predecessor.

BMC 20.14.155.

Conclusions Based on Findings

With conditions, the proposed development of two commercial buildings and related improvements, which would impact the wetland and stream buffer area, would meet the criteria for a reasonable use exception.

The Comprehensive Plan designates the subject properties as Freeway Corridor, and the properties are located within the Freeway Corridor zoning district. The proposed development of commercial buildings would be consistent with the development that characterizes the Freeway Corridor designation and that are an allowed use within the Freeway Corridor zone. The City used the optional DNS process under WAC 197-11-355 and provided reasonable notice of its environmental review together with its notice of application. The City reviewed the Applicant's environmental checklist and other environmental information, as well as comments from the consolidated notice period, including comments from DOE and the Suquamish Tribe, and ultimately determined that, with mitigation, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued a MDNS, which was not appealed. The City provided reasonable notice of the open record hearing. A member of the public provided written comments and testified during the hearing, expressing concerns about the proposal, including that the environmental degradation of the property is due to mowing of the property and that the proposal would have negative impacts on wildlife.

The subject properties meet the criteria for a reasonable use exception. Nearly 75 percent of the subject properties are covered with the standard 150-foot buffer associated with the multiple wetlands and stream located offsite. Even with a reduced buffer width of 110 feet, over half of the properties would be covered with buffer, which would not allow for a reasonable use of the properties. The proposal to build two commercial buildings would avoid direct impacts to the offsite wetlands and stream and has been designed to minimize impacts to the associated on-site protective buffer areas by placing the buildings in between the parking lots and the buffer area to reduce further degradation of the preserved protected buffer. The subject properties were platted prior to the adoption of the critical areas regulations; therefore, the inability of the Applicant to derive reasonable use of the property is not the result of actions by the Applicant. Although the

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Hearing Examiner does not rely on the previous Hearing Examiner decision in approving this project, the Hearing Examiner takes note of the previous approval of a reasonable use exception for a firefighting training facility in this same location, which would have resulted in more intensive impacts than the current proposal.

The on-site buffer area is significantly degraded due to previous grading and clearing as part of the initial platting and installation of infrastructure on the subject properties. The Applicant proposes to mitigate for the approximately 36,000 square feet of permanent impact to the buffer area by restoring and permanently protecting approximately 20,000 square feet of on-site protective buffer area. The conditions noted below would provide ongoing monitoring, necessary maintenance, and legal preservation status to ensure that the restored buffer area is providing sufficient habitat functions. The conditions below would also require the Applicant remove invasive species on a neighboring City owned parcel. The Hearing Examiner determines that, with the mitigation and the conditions detailed below, the proposed project would achieve no net loss of habitat function.

The Hearing Examiner determines that, based on the size and location of the protective buffer area, the prohibition against development within the protective buffer area would deny all reasonable use of the subject properties and that, with the conditions detailed below, the proposal meets the criteria for the approval of a reasonable use exception. *Findings 1-19.*

DECISION

Based upon the preceding findings and conclusions, the request for a reasonable use exception to allow for the construction of two commercial buildings and associated improvements that would permanently reduce the protective buffer area associated with multiple wetlands and a stream on properties totaling approximately 1.76 acres, located at 5225 and 5235 Sinclair Way, is **APPROVED**, with the following conditions:

1. Per BMC 20.14.340(e), all mitigation shall be completed, and bonding in place prior to occupancy of the site. Per BMC 20.14.360(c)(7) and BMC 20.14.750(e)(6), the applicant is required to post a performance bond, or other acceptable security guarantee, to ensure compliance with the approved mitigation plan prior to beginning any site work. A maintenance bond, or other acceptable security guarantee, is required to be in place prior to occupancy and shall not be released until the approved monitoring plan has been completed. All bonding shall comply with BMC 20.14.165.
2. Per BMC 20.14.330(i)(3) and BMC 20.14.730(n), fencing shall be installed along the edge of on-site buffers of delineated critical areas prior to occupancy. Fencing shall be maintained for the life of the development.
3. Prior to occupancy, permanent signs shall be installed on the eastern face of fencing separating the project from the wetland, at intervals of no less than 1 sign per 50 feet.

Sign messaging shall conform with BMC 20.14.330(i)(2). Signs shall be maintained for the life of the development.

4. Per BMC 20.14.130(g), a Notice to Title Conservation Easement shall be prepared by the City and be recorded on parcel numbers 5549-000-001-0006 and 5549-000-002-0005 prior to issuance of a Site Development Permit. The recorded notice shall include a copy of the most current mitigation and monitoring plan.
5. Development shall conform with the *May 30, 2024, Soundview Consultants Wetland, Fish and Wildlife Habitat Assessment Report and Buffer Enhancement Mitigation Plan*.
6. If the proposed mitigation plan is not fully implemented and identified paving not in place within five (5) years this decision shall be void.
7. Consistent with the *7/31/2024 Notice of Application*, the development shall conduct invasive species management, removal, and treatment on the adjacent City owned parcel (PID 5549-000-011-0004). Work is of a one-time nature and must be accomplished prior to occupancy of the site.
8. Alteration of beaver habitat will only be allowed in instances where the maintenance of the adjacent stormwater pond is required. Prior to any alterations of beaver habitat, the property owner or responsible party must obtain approval in writing from the City of Bremerton and a Hydraulic Permit Approval (HPA) from the Department of Fish and Wildlife shall also be completed.
9. Consistent with Washington State Department of Ecology comments, an addendum to the Soundview Mitigation Report reclassifying Wetland D2 as a Category II wetland, with a habitat score of 7 shall be provided with Site Development and Building Permits.

Decided this 12th day of May 2025.



Yoshi Kumara
Administrative Hearing Examiner
City of Bremerton